



## *City of Pleasant Hill*

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### MEMORANDUM

TO: Planning Commission

FROM: Greg Fuz, City Planner

DATE: January 27, 2009

SUBJECT: 2036 Pleasant Hill Road (Golden Eagle)  
Hearing to Determine if Sufficient Cause Exists to Initiate Enforcement Action

#### **Background**

In June 2008, City Staff received a complaint concerning the structure known as “the golden eagle” located in the front yard at 2036 Pleasant Hill Road. Staff investigated this matter and notified the property owner in June 2008 that the golden eagle does not comply with zoning ordinance provisions relating to accessory structures. On July 16, 2008 the property owner responded by letter (Attachment A) contending that the golden eagle is artwork and not subject to the zoning ordinance requirements applicable to accessory structures. On August 28, 2008, the Zoning Administrator responded to the property owner (Attachment B) and determined that the golden eagle is considered a “structure” and, as such, must comply with zoning ordinance requirements (height, setback, etc.). The golden eagle is approximately 16-17 feet tall, with a wingspan of approximately 6 feet and is estimated to be located approximately four (4) inches from the front property line at the closest point.

The Zoning Administrator requested the property owner to resolve this matter by September 29, 2008 by either: a) removing or relocating the golden eagle on the property so that it will comply with zoning ordinance requirements; or b) by requesting consideration of a minor variance for the golden eagle in its current location in the front yard. The applicant was advised of the findings that must be made for approval of a variance pursuant to PHMC §18.110.040.

In addition, to ensure that the golden eagle is properly attached to the ground and secured so that it will not fall onto the adjacent public right of way pending resolution of the zoning ordinance issues, the property owner was notified on December 15, 2008 to work with the Chief Building Official to confirm that the structure is properly secured (Attachment C). The Chief Building Official has since confirmed that the structure is properly secured.

At this time, the property owner has not responded further to the Zoning Administrator’s request to address zoning ordinance compliance, therefore this matter is before the Planning Commission to

confirm the Zoning Administrator's determination that the golden eagle should be considered an accessory structure and to determine if sufficient cause exists to proceed with code enforcement action.

### **Analysis**

*Authority:* Pursuant to Section 18.135.050 of the Zoning Ordinance, if the Zoning Administrator has any reason to believe a violation of the permit conditions and/or City regulations may exist, prior to commencing formal enforcement action or permit modification or revocation, the Zoning Administrator (or the Planning Commission upon referral from the Zoning Administrator) may hold a public hearing providing the alleged violator or property owner an opportunity to respond to the allegations. This hearing is also an opportunity for any other interested parties to provide evidence or testimony concerning the alleged violations. Due to the unique circumstances involved, the Zoning Administrator has referred this matter to the Planning Commission for consideration; therefore the Planning Commission should review the information received from all parties and then make one of the following determinations:

- a) Sufficient evidence has been provided to determine that a violation exists (i.e. the Planning Commission concurs with the Zoning Administrator's determination that the golden eagle should be considered an accessory structure subject to zoning ordinance requirements) and additional steps should be taken by the City to address the violation (e.g. recordation of a notice of violation, nuisance abatement or other legal remedies available to the City); or
- b) Insufficient evidence exists to determine conclusively that a violation exists and no further action will be taken by the City at this time.

The Planning Commission may also request staff to conduct further investigation into this matter.

*Relevant Ordinance Provisions:* The Zoning Administrator notified the property owner that the golden eagle is considered a structure based on Pleasant Hill Municipal Code (PHMC) §18.140.010, which defines a structure as:

*"anything constructed or erected that requires a location on the ground, including a building or swimming pool, but not including a fence or a wall used as a fence if the height does not exceed eight feet, or access drives or walks."*

An accessory structure is further defined as:

*"a structure placed on a site, other than the principal primary structure in a residential zoning district."*

In addition, PHMC §18.20.050.D states that:

*"an accessory structure in a required front yard shall not exceed three feet in height and is also subject to PHMC §18.50.100, (sight obstructions at intersections and driveways)."*

Based on these ordinance provisions, the Zoning Administrator determined that the golden eagle is subject to the development standards for accessory structures; therefore, due to its height exceeding three feet, it may not be located within the front yard setback of this single family residential property. The purpose for regulating accessory structures, particularly in front yard areas, is to ensure that such structures do not cause vision safety concerns, and to ensure that the intent of the City's design guidelines and related general plan policies regarding high quality design is satisfied.

The golden eagle could potentially comply with ordinance requirements if it is located in the rear yard provided that it does not exceed sixteen feet in height and meets the minimum setback requirements for accessory structures (three feet minimum with additional setback required based on the height of the structure up to a maximum of five feet).

The City Attorney has reviewed the property owner's contention that the golden eagle should not be subject to the zoning ordinance standards for accessory structures and has concluded that the zoning ordinance does not explicitly address requirements for statuary such as the golden eagle. However the City Attorney agrees that it is reasonable to conclude that the ordinance requirements for accessory structures could apply to structures such as the golden eagle, otherwise, results contrary to the intent of the front yard height and setback regulations could occur. The City Attorney has also reviewed applicable case law and determined that the golden eagle is not considered a sign within the meaning of the City's sign ordinance.

Staff also posed the question regarding applicability of standard zoning setback and height requirements to statuary to the League of Cities list serve for housing and community development issues. Planners from seven cities responded as follows:

Livermore: Statuary and similar features, not more than eight feet in height, are exempt from setback requirements. If over eight feet in height, statuary and similar features are treated as accessory structures and must comply with setbacks and height limitations per specific ordinance provisions.

Glendale: Statuary is considered a structure (similar to a fence or flagpole) and is subject to height and setback requirements per ordinance interpretation.

Visalia: No specific requirements for statuary.

Salinas: Statuary is treated as a "freestanding landscape-related architectural feature" subject to a minimum setback of three feet from a front property line; a maximum height of eight feet; and a maximum diameter of twenty-four inches per ordinance interpretation.

Murrieta: Statuary must meet standard height, setback and fire department access requirements per ordinance interpretation.

Hanford: Statuary is limited to a height of six feet in the front yard setback per ordinance interpretation.

Delano: Statuary is limited to forty inches in height within the front yard setback per ordinance interpretation.

## **Conclusion**

The Zoning Administrator's determination that the golden eagle should be considered an accessory structure subject to height and setback requirements is based on an interpretation of the ordinance, and not on any explicit provisions applicable to statuary or similar features. Interpretations of the ordinance are commonly made in similar situations by Staff in Pleasant Hill and in other cities as noted in the analysis above. Section 18.10.040A of the zoning ordinance states:

*"Where uncertainty exists regarding the interpretation of the provisions of this title, or its application to a specific site, the zoning administrator shall determine the intent of the provision."*

By referring this matter to the Planning Commission for review prior to proceeding with further enforcement action, the Zoning Administrator is requesting the Planning Commission to consider this matter and determine if Staff's determination that the golden eagle is an accessory structure is appropriate and whether enforcement action should proceed.

## **Recommendation**

Staff recommends that the Planning Commission:

- a) Receive evidence and testimony at this hearing from all interested parties;
- b) Consider the information in this staff report and the requirements of the City's zoning ordinance;
- c) Decide whether the Zoning Administrator's determination concerning the golden eagle is appropriate;
- d) Determine whether a violation exists and whether further enforcement action should be taken;

If further information is needed, the Planning Commission may continue this matter to a date certain so that further investigation can occur before a final determination regarding violations is made.

If the Planning Commission concurs with the Zoning Administrator's determination, the property owner will be notified to bring the golden eagle into compliance with zoning ordinance requirements by either removal, relocation to an approved location on the property, or application for a minor variance to request relief from ordinance requirements.

If the Planning Commission disagrees with the Zoning Administrator's determination, Staff will not take any further enforcement action regarding the golden eagle other than any further actions that may be necessary to ensure that it is safely anchored and installed. Staff will propose an amendment to the zoning ordinance addressing statuary for future Planning Commission consideration.

**Attachments**

Attachment A	Letter from Mr. Segraves, dated July, 16, 2008
Attachment B	Letter from City of Pleasant Hill, dated August 28, 2008
Attachment C	Letter from City of Pleasant Hill, dated December 16, 2008
Attachment D	Observations/photos
Attachment E	Location Map
Attachment F	Public Hearing Notice